

Amendment
Serial No. 10/518,842

Docket No. DE020161

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REMARKS

Claims 1-6 are pending in the application. Claims 1-6 stand rejected.

Claims 7-11 have been added herein. These claims are supported by the specification and drawings. For example, page 4, line 25 through page 5, lines 4.

The pending claims are amended herein to clarify the claimed invention. Claims 3 and 6 have been amended to independent form.

The Office Action objects to the figures as not showing the features of claim 3. Applicant respectfully submits that a drawing is not necessary as one skilled in the art would clearly recognize the structure of the combination of elements in claim 3 when compared to Fig. 1 and the description on page 5, line 30 to page 6, line 5.

The MPEP 608.02 requires drawings "where necessary for the understanding of the subject matter to be patented." It is respectfully submits that one skilled in the art would understand the invention taking into consideration the current drawings and description and that a further drawing should not be required.

Claims 1, 2, 4 and 5 stand rejected under 35 USC 102(b) as being anticipated by Tada et al. (hereinafter Tada).

Applicant's claim 1 includes the feature of the colloidal layer having a varying refractive index. This feature is supported by the specification, for example, on page 5, lines 20-24. The Tada reference does not disclose that that colloidal layer has a varying refractive index.

Tada only states that a refractive layer having a refractive index higher than a refractive index of the organic thin-film layer; and a fine ball layer disposed in contact with the refractive layer, the fine ball layer having a refraction index different from the

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refractive index of the refractive layer. However applicant is reciting the colloidal layer which is different from the combination of refractive layer and fine ball layer.

For at least the foregoing reasons claim 1 should be allowed. Claim 2 depends from claim 1 and should likewise be allowed. Claim 11 depends from claim 1 and further recites the colloidal layer contains pigments which feature is not found in the cited reference.

Claims 4 and 5 now depend from claim 3. As admitted in the Office Action claim the cited reference fails to anticipate claim 3 and therefore claims 4-5.

Claims 3 and 6 stand rejected under 35 USC 103(b) as being anticipated by Tada

With regard to claim 3 the Office Action admits Tada fails to teach the colloidal layer bordering on the laminated body opposite the substrate. Applicant respectfully disagrees that this is simply a design choice. The Office Action argues that either placement would yield similar results. However applicant's specification clearly sets forth on page 5, line 30 to page 6, line 6 the advantageous results in this embodiment. In particular see page 6, lines 3-5.

It is submitted that the comments in the Office Action that either arrangement would yield similar results is merely conclusory with no supporting evidence and is contradicted by applicant's specification.

Furthermore, the MPEP states "However, "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's

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specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984)."

It is respectfully submitted the Office Action has failed to meet the test for obviousness and the rejection of claim 3 should be withdrawn. Claims 4 and 5 now depend from claim 3 and should likewise be allowed.

With regard to claim 6 the Office Action merely states that the pixilation would enhance the contrast and therefore be obvious. However the MPEP requires a suggestion or motivation to make an obviousness rejection.

Here the Office Action argues the motivation is to enhance contrast, however no supporting evidence was provided as to whether this motivation is found in the prior art or is "well known." There is no suggestion in the reference and certainly it is not "well known" that pixilation enhances the contrast. Furthermore, the MPEP states "In limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on "common knowledge" in making a rejection, however such rejections should be judiciously applied."

If the rejection is to be maintained, it is respectfully requested a reference be provided which supports the proposition in the rejection and allows applicant to properly judge the motivation for combination.

For at least the foregoing reasons, the rejection of claim 6 should be withdrawn. Claims 7-10 depend from claim 6 and should likewise be allowed for at least similar reasons and because each includes additional distinguishing features.

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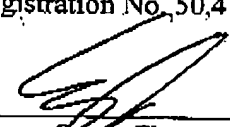
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For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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